

Council on Sex Offender Treatment



Texas Occupations Code Chapter 110

SECTION 14.005. (a) Subtitle A, Title 3, Occupations Code, is amended to codify Chapter 462, Acts of the 68th Legislature, Regular Session, 1983 (**formerly, Article 4413(51), Vernon's Texas Civil Statutes**), by adding Chapter 110 to read as follows:

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OCCUPATIONS CODE

CHAPTER 110. COUNCIL ON SEX OFFENDER TREATMENT

TEXAS OCCUPATIONS CODE SUBCHAPTER A. GENERAL PROVISIONS

§ 110.001. DEFINITIONS.

See also italicized material following text of this section

In this chapter:

- (1) "Board" means the Texas Board of Health.
- (2) "Council" means the Council on Sex Offender Treatment.
- (3) "Department" means the Texas Department of Health.
- (4) "Registry" means a database maintained by the council that contains the names of persons who:
 - (A) have met the council's criteria for the treatment of sex offenders; and
 - (B) provide mental health or medical services for the rehabilitation of sex offenders.
- (5) "Rehabilitation service" means a mental health treatment or medical intervention program designed to treat or remedy a sex offender's mental or medical problem that may relate or contribute to the sex offender's criminal or paraphiliac problem.
- (6) "Sex offender" means a person who:
 - (A) is convicted of committing or adjudicated to have committed a sex crime under state or federal law;
 - (B) is awarded deferred adjudication for a sex crime under state or federal law;
 - (C) admits to having violated state or federal law with regard to sexual conduct; or
 - (D) experiences or evidences a paraphiliac disorder as defined by the Revised Diagnostic and Statistical Manual, including any subsequent revision of that manual.
- (7) "Sex offender treatment provider" means a person, licensed or certified to practice in this state, including a physician, psychiatrist, psychologist, licensed professional

counselor, licensed marriage and family therapist, or social worker, who provides mental health or medical services for rehabilitation of sex offenders.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

Amendment by Acts 2003, 78th Leg., ch. 892, § 35

Section 1.02(a) of Acts 2003, 78th Leg., ch. 1276 provides, in part, that the "repeal of a statute by this Act does not affect an amendment, revision, or reenactment of the statute by the 78th Legislature, Regular Session, 2003. The amendment, revision, or reenactment is preserved and given effect as part of the code provision that revised the statute so amended, revised or reenacted."

Section 35 of Acts 2003, 78th Leg., ch. 892, eff. Sept. 1, 2003, adds § 1(7) of Vernon's Ann.Civ.St. art. 4413(51) [now this section] without reference to the repeal of said article by Acts 2003, 78th Leg., ch. 1276, § 14.005(b). As so added, § 1(7) reads:

"(7) 'Sex offender treatment provider' means a person, licensed or certified to practice in this state, who provides mental health or medical services for rehabilitation of sex offenders, including a physician, psychiatrist, psychologist, licensed professional counselor, licensed marriage and family therapist, or social worker."

SUBCHAPTER B. COUNCIL ON SEX OFFENDER TREATMENT

§ 110.051. COUNCIL; MEMBERSHIP.

See also material following text of this section

- (a) The council is within the department.
- (b) The council consists of six part-time members, appointed by the governor with the advice and consent of the senate as follows:
 - (1) two representatives of the public; and
 - (2) four members each of whom meets the requirements for registration as a sex offender treatment provider.
- (c) Appointments to the council shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

Amendment by Acts 2003, 78th Leg., ch. 1170, § 42.01

Section 1.02(a) of Acts 2003, 78th Leg., ch. 1276 provides, in part, that the "repeal of a statute by this Act does not affect an amendment, revision, or reenactment of the statute by the 78th Legislature, Regular Session, 2003. The amendment, revision, or reenactment is preserved and given effect as part of the code provision that revised the statute so amended, revised or reenacted."

Section 42.01 of Acts 2003, 78th Leg., ch. 1170, eff. Sept. 1, 2003, amends § 3(a) of Vernon's Ann.Civ.St. art. 4413(51) [now this section] without reference to the repeal of said article by Acts 2003, 78th Leg., ch. 1276, § 14.005(b). As so amended, § 3(a) reads:

§ 3. (a) The council is composed of seven part-time members, including three members who are representatives of the general public and four members each of whom meets the council's requirements for registration as a sex offender treatment provider. A person is not eligible for appointment as a public member if the person meets the council's requirements for registration as a sex offender treatment provider or if the person or the person's spouse:

- (1) is registered, certified, or licensed by an occupational regulatory agency in the field of sex offender treatment;
- (2) is employed by or participates in the management of a business entity or other organization regulated by the council or receiving funds from the council;
- (3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the council or receiving funds from the council; or
- (4) uses or receives a substantial amount of tangible goods, services, or funds from the council, other than compensation or reimbursement authorized by law for council membership, attendance, or expenses."

§ 110.052. PUBLIC MEMBERSHIP ELIGIBILITY.

A person is not eligible for appointment as a public member if:

- (1) the person meets the requirements for registration as a sex offender treatment provider; or
- (2) the person or the person's spouse:
 - (A) is registered, certified, or licensed by an occupational regulatory agency in the field of sex offender treatment;
 - (B) is employed by or participates in the management of a business entity or other organization regulated by the council or receiving funds from the council;
 - (C) owns or controls, directly or indirectly,

more than a 10 percent interest in a business entity or other organization regulated by the council or receiving funds from the council; or

(D) uses or receives a substantial amount of tangible goods, services, or funds from the council, other than compensation or reimbursement authorized by law for council membership, attendance, or expenses.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS.

(a) In this section, "Texas trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) An officer, employee, or paid consultant of a Texas trade association in the field of sex offender treatment may not be a member of the council and may not be an employee of the council who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.

(c) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of sex offender treatment may not be a member of the council and may not be an employee of the council who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.

(d) A person may not serve as a member of the council or act as the general counsel to the council if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the council.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.054. TERMS.

See also italicized material following text of this section

Members of the council serve staggered six-year terms. The terms of two members expire on February 1 of each odd-numbered year.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

Amendment by Acts 2003, 78th Leg., ch. 1170, § 42.02

Section 1.02(a) of Acts 2003, 78th Leg., ch. 1276 provides, in part, that the "repeal of a statute by this Act does not affect an amendment, revision, or reenactment of the statute by the 78th Legislature, Regular Session, 2003. The amendment, revision, or reenactment is preserved and given effect as part of the code provision that revised the statute so amended, revised or reenacted."

Section 42.02 of Acts 2003, 78th Leg., ch. 1170, eff. Sept. 1, 2003, amends § 4(a) of Vernon's Ann.Civ.St. art. 4413(51) [now this section] without reference to the repeal of said article by Acts 2003, 78th Leg., ch. 1276, § 14.005(b). As so amended, § 4(a) reads:

"§ 4. (a) Members of the council hold office for staggered terms of six years, with two or three members' terms expiring February 1 of each odd-numbered year."

§ 110.055. PRESIDING OFFICER. The governor shall designate a member of the council as the presiding officer of the council to serve in that capacity at the pleasure of the governor.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.056. GROUNDS FOR REMOVAL.

- (a) It is a ground for removal from the council that a member:
 - (1) does not have at the time of appointment the qualifications required by Sections 110.051(b) and 110.052;
 - (2) does not maintain during service on the council the qualifications required by Sections 110.051(b) and 110.052;
 - (3) does not complete the training program as required by Section 110.059;
 - (4) violates a prohibition established by Section 110.053;
 - (5) cannot because of illness or disability discharge the member's duties for a substantial part of the member's term; or
 - (6) is absent from more than half of the regularly scheduled council meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the council.

- (b) The validity of an action of the council is not affected by the fact the action is taken when a ground for removal of a council member exists.
- (c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the council of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the council, who shall notify the governor and the attorney general that a potential ground exists.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.057. MEETINGS.

- (a) The council shall meet at least four times each year.
- (b) The council may hold additional meetings at the call of the presiding officer or as provided by council rule.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.058. COMPENSATION; REIMBURSEMENT.

- (a) A council member may not receive compensation for performing the duties of the council.
- (b) A council member is entitled to reimbursement for travel and other necessary expenses incurred in performing official duties at the rate provided in the General Appropriations Act for state employees.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.059. TRAINING.

- (a) To be eligible to take office as a member of the council, a person appointed to the council must complete at least one course of a training program that complies with this section. If the person has not completed the training course at the time of the appointment, the person must complete the training program not later than six months after the date of appointment.
- (b) The training program must provide information to a person regarding:
 - (1) the enabling legislation that created the council;
 - (2) the programs operated by the council;

- (3) the role and functions of the council;
 - (4) the rules of the council, with an emphasis on the rules relating to disciplinary and investigatory authority;
 - (5) the current budget for the council;
 - (6) the results of the most recent formal audit of the council;
 - (7) the requirements of Chapters 551, 552, and 2001, Government Code;
 - (8) the requirements of the conflict of interest laws and other laws relating to public officials; and
 - (9) any applicable ethics policies adopted by the council or the Texas Ethics Commission.
- (c) A person appointed to the council is entitled to reimbursement for travel expenses incurred in attending the training program, as provided by the General Appropriations Act, as if the person were a member of the council.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

SUBCHAPTER C. EXECUTIVE DIRECTOR AND STAFF

§ 110.101. EXECUTIVE DIRECTOR. The commissioner of public health shall employ an executive director, chosen with the advice and consent of the council, who is the executive head of the council and performs its administrative duties.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.102. STAFF. The executive director shall employ staff necessary to administer the council's duties.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.103. DIVISION OF RESPONSIBILITIES. The council shall develop and implement policies that clearly separate the policymaking responsibilities of the council and the management responsibilities of the executive director and the staff of the council.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.104. QUALIFICATIONS AND STANDARDS OF CONDUCT

INFORMATION. The executive director or the executive director's designee shall provide, as often as necessary, to council members and employees information regarding their:

- (1) qualifications for office or employment under this chapter; and
- (2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

SUBCHAPTER D. COUNCIL POWERS AND DUTIES

§ 110.151. TREATMENT FOR SEX OFFENDERS. The council shall:

- (1) develop treatment strategies for sex offenders by evaluating in-state and out-of-state programs for sex offender treatment;
- (2) set standards for treatment of sex offenders that must be met by sex offender treatment providers to be eligible for inclusion in the council's registry; and
- (3) recommend to licensing and regulatory boards and to the directors of current programs methods of improving programs to meet council standards.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.152. REGISTRY AND REGISTRATION REQUIREMENTS. The council shall:

- (1) maintain a registry; and
- (2) develop and implement by rule:
 - (A) registration requirements; and
 - (B) procedures for sex offender treatment providers in the registry.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.153. COLLECTION AND DISSEMINATION OF INFORMATION. The council shall collect and disseminate information about available sex offender treatment programs to:

- (1) judicial officers;
- (2) community supervision or parole workers;
- (3) appropriate state and municipal agencies; and

(4) the public.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.154. DISTRIBUTION OF MONEY. The council shall distribute money appropriated to the council by the legislature for that purpose to political subdivisions, private organizations, or other persons to be used for the development, operation, or evaluation of sex offender treatment programs.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.155. AGENCY ASSISTANCE. The council shall advise and assist agencies in coordinating procedures to provide treatment services. The treatment services may include community-based programs.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.156. ADJUDICATION INFORMATION.

- (a) The council shall establish a uniform method of obtaining adjudication information. The uniform method must require that:
 - (1) a complete set of fingerprints, the complete name of the person being investigated, or other information necessary to conduct a criminal history background check be submitted to the Department of Public Safety or another law enforcement agency; and
 - (2) if fingerprints are submitted, the fingerprints be submitted to the Federal Bureau of Investigation for further information if a relevant disqualifying record or other substantive information is not obtained from a state or local law enforcement agency.
- (b) A law enforcement agency may provide to the council information about the conviction or deferred adjudication of a person being investigated only if the information:
 - (1) is relevant to the person's current or proposed registration; and
 - (2) was collected in accordance with this section.
- (c) The council is not entitled to adjudication information that is not relevant. Adjudication information is relevant only if it relates to a conviction or deferred adjudication for:
 - (1) a sexual offense;
 - (2) murder, assault, battery, or any other offense involving personal injury or threat to another person; or
 - (3) a felony not listed in Subdivision (1) or (2).

- (d) All adjudication information received by the council is privileged information and for the exclusive use of the council.
The information may be released or otherwise disclosed to any other person or agency only:
- (1) on court order; or
 - (2) with the consent of the person being investigated.
- (e) The council by rule shall establish a method to collect and destroy adjudication information after the council makes a decision on the eligibility of the person for registration who is the subject of the information. The council shall destroy the adjudication information not later than the first anniversary of the date of the council's decision on the person's eligibility for registration.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.157. CONTINUING EDUCATION PROGRAMS. The council shall design and conduct continuing education programs for sex offender treatment providers.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.158. RULEMAKING. The council may adopt rules consistent with this chapter. In adopting rules, the council shall:

- (1) consider the rules and procedures of the board and the department; and
- (2) adopt procedural rules consistent with similar existing rules and procedures of the board or the department.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.159. COLLECTION OF FEES.

- (a) The council shall:
 - (1) charge and collect reasonable fees in amounts necessary to cover the costs of administering this chapter; and
 - (2) send all fees collected under this section to the department.
- (b) Fees charged and collected by the council under this section may include:
 - (1) sex offender treatment provider registration and renewal fees;
 - (2) training fees;
 - (3) publication fees; and

- (4) fees for providing continuing education and other services to sex offender treatment providers.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.160. BIENNIAL REPORT.

- (a) The council shall file biennially a report with the governor, lieutenant governor, and speaker of the house of representatives about the activities of the council. The council shall include in the report:
 - (1) any recommendation made under Section 110.151; and
 - (2) any other recommendation the council considers appropriate.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.161. PUBLICATION OF REGISTRY.

- (a) The council shall prepare annually a list of registered sex offender treatment providers.
- (b) The council by rule shall establish procedures for developing and distributing the list of registered sex offender treatment providers.
- (c) The council, on request, shall make the list of registered sex offender treatment providers available on payment of a reasonable fee in an amount sufficient to cover the costs of printing and distribution.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.162. CONFIDENTIALITY REQUIRED. The council and the staff and consultants employed by the council shall keep confidential any record relating to the identity, examination, diagnosis, prognosis, or treatment of a sex offender.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.163. GRANTS AND DONATIONS. The council may apply for and accept on behalf of the state a grant or donation from any source to be used by the council to perform its duties.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

SUBCHAPTER E. INTERAGENCY ADVISORY COMMITTEE

§ 110.201. INTERAGENCY ADVISORY COMMITTEE. The interagency advisory committee shall advise the council on administering the council's duties under this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.202. ADVISORY COMMITTEE MEMBERSHIP.

- (a) The executive head of each of the following agencies or that person's designated representative shall serve as a member of the interagency advisory committee:
 - (1) Texas Department of Criminal Justice;
 - (2) Texas Juvenile Probation Commission;
 - (3) Texas Department of Mental Health and Mental Retardation;
 - (4) Texas Youth Commission;
 - (5) Sam Houston State University;
 - (6) Department of Protective and Regulatory Services; and
 - (7) Texas Council of Community Mental Health and Mental Retardation Centers.
- (b) The director of each of the following divisions of a state agency or that person's designated representative shall serve as a member of the interagency advisory committee:
 - (1) the criminal justice division of the governor's office; and
 - (2) the sexual assault prevention and crisis services division of the office of the attorney general.
- (c) The council may appoint additional members to the interagency advisory committee as the council determines is necessary. An additional member appointed by the council must be a representative of a public or private nonprofit entity that has a demonstrated interest in improving the treatment of sex offenders.
- (d) If the executive head of a state agency or the director of a division designates a representative as a member of the interagency advisory committee, the representative must be, at the time of the designation and during the time of service on the committee, an officer or employee of the agency or division.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.203. MEETINGS. The interagency advisory committee shall meet at the call of its presiding officer or at the request of the council.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.204. AGENCY COOPERATION. Each state agency or division of an agency represented on the interagency advisory committee shall cooperate with the council at the request of the council.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

SUBCHAPTER F. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

§ 110.251. PUBLIC INTEREST INFORMATION.

- (a) The council shall prepare information of public interest describing the functions of the council and the procedures by which complaints are filed with and resolved by the council.
- (b) The council shall make the information available to the public and appropriate state agencies.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.252. PUBLIC PARTICIPATION.

- (a) The council shall develop and implement policies that provide the public with a reasonable opportunity to appear before the council and to speak on any issue under the council's jurisdiction.
- (b) The executive director shall prepare and maintain a written plan describing how a person who does not speak English may be provided reasonable access to the council's programs and services.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.253. COMPLAINTS. The council by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the council for the purpose of directing complaints to the council. The council may provide for that notice:

- (1) on each registration form, application, or written contract for services of a person regulated under this chapter;
- (2) on a sign prominently displayed in the place of business of each person regulated under this chapter; or

(3) in a bill for service provided by a person regulated under this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.254. RECORD OF COMPLAINTS. (

a) The council shall keep an information file about each written complaint filed with the council that the council has authority to resolve. The information file must include:

- (1) the name of the person who filed the complaint;
- (2) the date the complaint is received;
- (3) the subject matter of the complaint;
- (4) the name of each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and
- (6) for a complaint for which the council took no action, an explanation of the reason the complaint was closed without action.

(b) The council shall provide to a person filing a complaint and to each person who is the subject of the complaint a copy of the council's policies and procedures relating to complaint investigation and resolution.

(c) The council, at least quarterly and until final disposition of a complaint, shall notify the person filing the complaint and each person who is the subject of the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.255. COMPLAINT INVESTIGATION; SUBPOENAS.

(a) In an investigation of a complaint filed with the council, the council may request that the commissioner of public health or the commissioner's designee approve the issuance of a subpoena. If the request is approved, the council may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence in this state. The council may delegate the authority granted under this subsection to the executive director of the council.

(b) A subpoena may be served personally or by certified mail.

(c) If a person fails to comply with a subpoena, the council, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or the county in which a hearing conducted by the council may be held.

- (d) On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena. The court may punish a person who fails to obey the court order.
- (e) The council shall pay a reasonable fee for photocopies subpoenaed under this section in an amount not to exceed the amount the council may charge for copies of its records.
- (f) The reimbursement of the expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103, Government Code.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.256. CONFIDENTIALITY.

- (a) Except as provided by Subsection (b), all information and materials subpoenaed or compiled by the council in connection with a complaint and investigation are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the council or its employees or agents involved in the complaint and investigation.
- (b) The information described by Subsection (a) may be disclosed to:
 - (1) persons involved with the council in a complaint and investigation;
 - (2) professional sex offender treatment provider licensing or disciplinary boards in other jurisdictions;
 - (3) peer assistance programs approved by the board under Chapter 467, Health and Safety Code;
 - (4) law enforcement agencies; and
 - (5) persons engaged in bona fide research, if all individual-identifying information is deleted.
- (c) The filing of formal charges by the council against a person under this chapter, the nature of those charges, the council's disciplinary proceedings, and final disciplinary actions, including warnings and reprimands, by the council are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

SUBCHAPTER G. SEX OFFENDER TREATMENT PROVIDER REGISTRY

§ 110.301. USE OF TITLE; REGISTRATION REQUIRED. A person may not claim to be a sex offender treatment provider or use the title "sex offender treatment provider" unless the person is listed in the registry.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.302. ELIGIBILITY FOR REGISTRATION. The council by rule shall develop procedures and eligibility requirements for inclusion in the registry, including, if appropriate, requirements related to clinical practice experience and assessment, continuing education, and supervision.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.303. REGISTRATION OF OUT-OF-STATE APPLICANTS. The council may waive any prerequisite to registration for an applicant after reviewing the applicant's credentials and determining that the applicant holds a valid registration from another state that has registration requirements substantially equivalent to those of this state.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.304. CONVICTION OR DEFERRED ADJUDICATION INFORMATION. The council may receive from a law enforcement agency information about the conviction or deferred adjudication of a person who has applied for registration or renewal of registration.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.305. REGISTRATION EXPIRATION.

- (a) The council by rule may adopt a system under which registrations expire on various dates during the year.
- (b) For the year in which the registration expiration date is changed, registration fees shall be prorated on a monthly basis so that each person pays only that portion of the registration fee allocable to the number of months during which the registration is valid.
- (c) On renewal of a registration on the new expiration date, the total registration renewal fee is payable.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.306. REGISTRATION RENEWAL REQUIRED. A person whose registration has expired may not engage in activities that require registration until the registration is renewed.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.307. PROCEDURE FOR RENEWAL.

- (a) Not later than the 30th day before the expiration date of a person's registration, the council shall send written notice of the registration expiration to the person at the person's last known address according to the records of the council.
- (b) A person who is otherwise eligible to renew a registration may renew an unexpired registration by paying the required registration fee to the council before the registration expiration date.
- (c) A person who is otherwise eligible to renew a registration and whose registration has been expired for:
 - (1) 90 days or less, may renew the registration by paying to the council a fee equal to one and one-half times the required renewal fee; and
 - (2) longer than 90 days but less than one year, may renew the registration by paying to the council a fee equal to two times the required renewal fee.
- (d) Except as provided by Section 110.308, a person whose registration has been expired for one year or longer may not renew the registration. The person may obtain a new registration by submitting to reexamination and complying with the requirements and procedures for obtaining an original registration.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.308. RENEWAL OF EXPIRED REGISTRATION BY OUT-OF-STATE PRACTITIONER. A person whose registration has been expired for one year or longer may renew the registration without complying with the requirements of Section 110.307(d) by paying to the council a fee equal to two times the required renewal fee if the person:

- (1) was registered in this state;
- (2) moved to another state; and
- (3) has been registered and in practice in the other state for two years preceding the date of application for renewal.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.309. DENIAL OF REGISTRATION.

See also material following text of this section

The council may deny an application for registration if:

- (1) the council determines that a previous criminal conviction or deferred adjudication indicates the applicant is not qualified or suitable; or
- (2) the applicant fails to provide the information described by Section 110.156(a)(1).

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

Amendment by Acts 2003, 78th Leg., ch. 326, § 27

Section 1.02(a) of Acts 2003, 78th Leg., ch. 1276 provides, in part, that the "repeal of a statute by this Act does not affect an amendment, revision, or reenactment of the statute by the 78th Legislature, Regular Session, 2003. The amendment, revision, or reenactment is preserved and given effect as part of the code provision that revised the statute so amended, revised or reenacted."

Section 27 of Acts 2003, 78th Leg., ch. 326, eff. Sept. 1, 2003, adds § 13D of Vernon's Ann.Civ.St. art. 4413(51) [now this section] without reference to the repeal of said article by Acts 2003, 78th Leg., ch. 1276, § 14.005(b). As so added, § 13D reads:

Emergency Suspension

§ 13D.

- (a) The council or a three-member committee of council members designated by the council shall temporarily suspend the registration of a person registered under this Act if the council or committee determines from the evidence or information presented to it that continued practice by the person would constitute a continuing and imminent threat to the public welfare.
- (b) A registration may be suspended under this section without notice or hearing on the complaint if:
 - (1) action is taken to initiate proceedings for a hearing before the State Office of Administrative Hearings simultaneously with the temporary suspension; and
 - (2) a hearing is held as soon as practicable under this Act and Chapter 2001, Government Code.
- (c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a

continuing and imminent threat to the public welfare still exists. A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension."

SUBCHAPTER H. DISCIPLINARY PROCEDURES

§ 110.351. DISCIPLINARY POWERS OF COUNCIL. The council shall revoke, suspend, or refuse to renew a registration, place on probation a person whose registration has been suspended, or reprimand a person who is listed in the registry if the person violates this chapter or a rule of the council.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.352. PROBATION. If the suspension of a person's registration is probated, the council may require the person to:

- (1) report regularly to the council on matters that are the basis of the probation;
- (2) limit the person's practice to the areas prescribed by the council; or
- (3) continue or review professional education until the person attains a degree of skill satisfactory to the council in those areas that are the basis of the probation.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.353. DISCIPLINARY HEARING.

See also material following text of this section

- a) If the council proposes to revoke, suspend, or refuse to renew a person's registration, the person is entitled to a hearing conducted by the State Office of Administrative Hearings.
- (b) Disciplinary proceedings are governed by Chapter 2001, Government Code.
- (c) Rules of practice adopted by the council under Section 2001.004, Government Code, applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

Amendment by Acts 2003, 78th Leg., ch. 326, § 27

Section 1.02(a) of Acts 2003, 78th Leg., ch. 1276 provides, in part, that the "repeal of a statute by this Act does not affect an amendment, revision, or reenactment of the statute by the 78th Legislature, Regular Session, 2003. The amendment, revision, or reenactment is preserved and given effect as part of the code provision that revised the statute so amended, revised or reenacted."

Section 27 of Acts 2003, 78th Leg., ch. 326, eff. Sept. 1, 2003, adds § 13E of Vernon's Ann.Civ.St. art. 4413(51) [now this section] without reference to the repeal of said article by Acts 2003, 78th Leg., ch. 1276, § 14.005(b). As so added, § 13E reads:

Administrative Penalty

"§ 13E.

- (a) The council may impose an administrative penalty on a person registered under this Act who violates this Act or a rule or order adopted under this Act.
- (b) The amount of the administrative penalty may not be less than \$50 or more than \$5,000 for each violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. The amount shall be based on:
 - (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
 - (2) the economic harm caused by the violation;
 - (3) the history of previous violations;
 - (4) the amount necessary to deter a future violation;
 - (5) efforts to correct the violation; and
 - (6) any other matter that justice may require.
- (c) If the commissioner of public health or the commissioner's designee determines that a violation occurred, the commissioner or the designee may issue to the council a report stating:
 - (1) the facts on which the determination is based; and
 - (2) the commissioner's or the designee's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.
- (d) Within 14 days after the date the report is issued, the commissioner of health or the commissioner's designee shall give written notice of the report to the person. The notice must:
 - (1) include a brief summary of the alleged violation;
 - (2) state the amount of the recommended administrative penalty; and
 - (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

- (e) Within 10 days after the date the person receives the notice, the person in writing may:
- (1) accept the determination and recommended administrative penalty of the commissioner of public health or the commissioner's designee; or
 - (2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.
- (f) If the person accepts the determination and recommended penalty of the commissioner of public health or the commissioner's designee, the council by order shall approve the determination and impose the recommended penalty.
- (g) If the person requests a hearing or fails to respond in a timely manner to the notice, the commissioner of public health or the commissioner's designee shall set a hearing and give written notice of the hearing to the person.
- (h) An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.
- (i) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the council a proposal for a decision about the occurrence of the violation and the amount of a proposed administrative penalty.
- (j) Based on the findings of fact, conclusions of law, and proposal for decision, the council by order may determine that:
- (1) a violation occurred and impose an administrative penalty; or
 - (2) a violation did not occur.
- (k) The notice of the council's order given to the person must include a statement of the right of the person to judicial review of the order.
- (l) Within 30 days after the date the council's order becomes final, the person shall:
- (1) pay the administrative penalty; or
 - (2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.
- (m) Within the 30-day period prescribed by Subsection (l) of this section, a person who files a petition for judicial review may:
- (1) stay enforcement of the penalty by:
 - (A) paying the penalty to the court for placement in an escrow account; or
 - (B) giving the court a supersedeas bond approved by the court that:
 - (i) is for the amount of the penalty; and
 - (ii) is effective until all judicial review of the council's order is final; or
 - (2) request the court to stay enforcement of the penalty by:
 - (A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the

penalty and is financially unable to give the supersedeas bond; and
B) giving a copy of the affidavit to the commissioner of public health or the commissioner's designee by certified mail.

(n) If the commissioner of public health or the commissioner's designee receives a copy of an affidavit under Subsection (m)(2) of this section, the commissioner or the designee may file with the court, within five days after the date the copy is received, a contest to the affidavit.

(o) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

(p) If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the penalty may be collected. The attorney general may sue to collect the penalty.

(q) If the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

(r) If the person paid the administrative penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person. The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(s) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond. If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

(t) A proceeding under this section is a contested case under Chapter 2001, Government Code."

SUBCHAPTER I. CRIMINAL PENALTIES

§ 110.401. OFFENSE: MISUSE OF TITLE.

(a) A person commits an offense if the person violates Section 110.301.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.

§ 110.402. OFFENSE: RELEASE OF ADJUDICATION INFORMATION.

(a) A person commits an offense if the person releases or discloses in violation of Section 110.156 adjudication information received by the council.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2003, 78th Leg., ch. 1276, § 14.005(a), eff. Sept. 1, 2003.